

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

ROVER COMMUNITY TRANSPORTATION  
Employer

and

Case 04-RC-151199<sup>1</sup>

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
DISTRICT COUNCIL 88  
Petitioner

**DECISION AND  
CERTIFICATION OF REPRESENTATIVE**

Pursuant to a Stipulated Election Agreement, an election was conducted on Thursday, May 28, 2015 in the following unit:

INCLUDED: All full-time and regular part-time drivers and monitors employed by the Employer at its 1002 S. Chestnut Street, Downingtown, Pennsylvania facility.

EXCLUDED: All other employees, office clericals, dispatchers, mechanics, professional employees, guards and supervisors as defined in the Act.

The tally of ballots showed that of the approximately 132 eligible voters, 67 cast ballots for the Petitioner, and 64 cast ballots against representation. There were 2 challenged ballots. Therefore, the Petitioner received a majority of the votes.

The Employer timely filed 6 objections. On June 4, 2015, the Regional Director for Region 4 dismissed 3 of those objections. On June 12, 2015, after the General Counsel issued an Order transferring the case to Region 5, I issued a Notice of Hearing, setting the remaining 3 objections for hearing. Pursuant to that Notice, a hearing was held before Hearing Officer Bisi O. Dean on June 17, 2015. All parties were afforded a full opportunity to be heard, to present evidence, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to provide arguments. The parties were permitted to file post-hearing briefs, and each party did so on June 22, 2015. Subsequently, on July 20, 2015, the Hearing Officer issued a report in which she recommended overruling the objections. In doing so, the Hearing Officer determined that: (a) the evidence was insufficient to establish that the Board agent conducting the election inappropriately invalidated a ballot; and (b) the Petitioner's challenges to the ballots of employees Kathleen Morroni and Randy Schmidt should be sustained, and that those challenged ballots not be opened and counted. No party filed exceptions to the Hearing Officer's recommendations.

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<sup>1</sup> The Hearing Officer's Report on Objections & Challenges changed the caption of this matter to 05-RC-151199. That change was an inadvertent error, and the caption is restored to reflect the original case number of 04-RC-151199.

In the absence of such exceptions to the Hearing Officer's report, I conclude that the Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Having carefully considered the Hearing Officer's findings, conclusions and recommendations, I hereby adopt the Hearing Officer's recommendation that the evidence is insufficient to establish that the Board agent inappropriately invalidated a ballot. In this regard, I agree with the Hearing Officer's determination that the marking on the ballot corresponded with the unit number system utilized by the Employer to identify drivers. Thus, the marking on the invalidated ballot gave rise to the possibility of revealing the identity of the voter. In the circumstances shown to have been present here, the Hearing Officer correctly determined that the Employer's objections should be overruled because the Board agent acted appropriately in voiding the ballot containing the marking. Furthermore, I agree with the Hearing Officer's determination that were it necessary to resolve the challenges to the ballots of employees Morroni and Schmidt, both challenges should be sustained because neither individual had worked sufficient time as a driver. I therefore overrule the Employer's objections, and, as a majority of the valid votes counted have been cast for the Petitioner, I shall certify the Petitioner as the representative of the appropriate bargaining unit described above.

#### **CERTIFICATION OF REPRESENTATIVE**

**IT IS HEREBY CERTIFIED** that a majority of the valid ballots have been cast for American Federation of State, County and Municipal Employees, District Council 88, and that it is the exclusive representative of all the employees in the following bargaining unit:

INCLUDED: All full-time and regular part-time drivers and monitors employed by the Employer at its 1002 S. Chestnut Street, Downingtown, Pennsylvania facility.

EXCLUDED: All other employees, office clericals, dispatchers, mechanics, professional employees, guards and supervisors as defined in the Act.

#### **REQUEST FOR REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by September 8, 2015. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a

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request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: August 26, 2015

(SEAL)

/s/ Charles L. Posner  
Charles L. Posner, Regional Director  
National Labor Relations Board, Region 05  
Bank of America Center, Tower II  
100 South Charles Street, Suite 600  
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